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from or palpable insufficiency of evidence and not in a doubtful case merely because the court, if sitting as a jury, would have given a different verdict.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3922, 3928-3934; Dec. Dig. § 1001.\* 10 Va.-W. Va. Enc. Dig. 457.]

Error to Circuit Court, Louisa County.

Trespass by E. Landrum and others against the Virginia Carolina Chemical Company and others. From a judgment against defendants, the Sulphur Mining & Railroad Company and the Arminius Chemical Company, they bring error. Affirmed.

WHITTLE, J., absent.

*F. W. Sims, Gordon & Gordon, and Jas. R. Caton*, for plaintiffs in error.

*W. C. Bibb and Harmon & Walsh*, for defendants in error.

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DAVIS *v.* DAVIS.

Nov. 16, 1911.

[73 S. E. 946.]

**1. Indictment and Information (§ 15\*)—Former Indictment.—**

Where one or more counts in an indictment state offenses not embraced in indictments previously dismissed, though provable by evidence which would have been admissible under the dismissed indictments, the prisoner cannot be discharged on habeas corpus, but must be remanded for trial.

[Ed. Note.—For other cases, see Indictment and Information, Dec. Dig. § 15.\* 7 Va.-W. Va. Enc. Dig. 385.]

**2. Indictment and Information (§ 132\*)—Election between Counts.**

—Where one or more counts in an indictment state offenses not embraced in dismissed indictments, but provable by evidence which would have been admissible under the dismissed indictments, it is proper practice, when the prisoner is brought to trial, to require the attorney for the commonwealth to state upon what counts he relies as setting forth offenses not embraced in the dismissed indictments.

[Ed. Note.—For other cases, see Indictment and Information, Dec. Dig. § 132.\* 7 Va.-W. Va. Enc. Dig. 385.]

Application by Charles Hall Davis for writ of habeas corpus to Arthur Kyle Davis. Denied.

*George S. Bernard, John L. Lee, James Mann, and Charles T. Lassiter*, for petitioner.

*Samuel W. Williams*, Atty. Gen., and *Richard H. Mann*, for respondent.

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.